

ASSEMBLY BILL

No. 491

Introduced by Assembly Member Portantino

February 15, 2011

An act to amend Section 120990 of, and to add Section 120889 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as introduced, Portantino. HIV testing.

Existing law establishes the State Department of Public Health and sets forth its powers and duties, including, but not limited to, administration of a program to provide information, establish testing sites, and award contracts for AIDS early intervention projects to provide appropriate medical treatment to prevent or delay the progression of disease that results from HIV infection, to coordinate related services, and to provide information and education to prevent the spread of the infection to others. Existing law sets forth the powers and duties of an HIV counselor in a project HIV counseling and testing site funded by the department through a local health jurisdiction or its agents.

This bill would require the department to, upon appropriation by the Legislature, allocate state and federal funds that are intended to be used to test persons for HIV to a local health jurisdiction in accordance with the prevalence of HIV and AIDS in the local jurisdiction.

Existing law requires a medical care provider, prior to ordering an HIV test, to provide information about the test to the patient, to inform the patient that there are numerous treatment options available, and to inform the patient that a person who tests negative for HIV should continue to be routinely tested.

This bill would delete this provision, and would specify that an HIV counselor is a medical care provider for the purposes of related provisions. The bill would delete a provision requiring that the patient sign a specified written statement documenting the person's consent, and would delete related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all the
2 following:
- 3 (a) HIV testing has entered a new era as policymakers have
4 begun to understand that ensuring that more people know their
5 HIV status is critical to maintaining health and reducing the spread
6 of the virus. A person's awareness of his or her HIV status leads
7 to treatment, better survival rates, and preventing transmission.
- 8 (b) The California Office of AIDS estimates that up to 39,000
9 Californians have HIV and do not know it. People who do not
10 know their HIV status do not begin life-prolonging treatments,
11 and they continue to expose others to HIV through unprotected
12 risk behaviors.
- 13 (c) Research shows that when people learn they are infected
14 with HIV, they take steps to protect their health and the health of
15 their partners. In a 2005 meta-analysis of sexual behaviors, persons
16 who knew their HIV status were 68 percent less likely to engage
17 in unprotected intercourse with uninfected partners.
- 18 (d) According to the federal Centers for Disease Control and
19 Prevention, cohort studies have demonstrated that HIV-infected
20 persons who are unaware of their infection do not reduce risk
21 behaviors. Persons tested for HIV who do not return for test results
22 might even increase their risk for transmitting HIV to partners.
- 23 (e) Additionally, the earlier a person is diagnosed, the sooner
24 he or she can access medical care and other prevention services
25 to further prevent transmission and disease progression.
- 26 (f) Because medical treatment that lowers HIV viral load might
27 also reduce risk for transmission to others, early referral to medical
28 care could prevent HIV transmission in communities while
29 reducing a person's risk for HIV-related illness and death.

(g) For all of these reasons, routine HIV testing is essential to any comprehensive HIV prevention program.

(h) With an eye toward making HIV testing more routine, the federal government has adopted a national goal of six million HIV tests each year.

(i) It is the intent of the Legislature that the State of California accomplish both of the following:

(1) Make every effort to ensure that HIV testing is routinely available in physicians' offices, hospitals, clinics, and every other public and private medical and nonmedical setting in which HIV testing is administered.

(2) Fulfill its fair share of the national testing goal by seeking to test 550,000 Californians each year.

SEC. 2. Section 120889 is added to the Health and Safety Code, to read:

120889. The department shall, upon appropriation by the Legislature, allocate state and federal funds that are intended to be used to test persons for HIV to a local health jurisdiction in accordance with the prevalence of HIV and AIDS in the jurisdiction at the time of the allocation decision.

SEC. 3. Section 120990 of the Health and Safety Code is amended to read:

120990. (a) Prior to ordering a test that identifies infection with HIV, a medical care provider shall inform the patient that the test is planned, ~~provide information about the test, inform the patient that there are numerous treatment options available for a patient who tests positive for HIV and that a person who tests negative for HIV should continue to be routinely tested,~~ and advise the patient that he or she has the right to decline the test. If a patient declines the test, the medical care provider shall note that fact in the patient's medical file. *For the purposes of this subdivision, "a medical care provider" includes, but is not limited to, a person who is authorized to administer an HIV test pursuant to Section 120917.*

(b) Subdivision (a) shall not apply when a person independently requests an HIV test from the provider.

~~(c) Except as provided in subdivision (a), no person shall administer a test for HIV infection unless the person being tested or his or her parent, guardian, conservator, or other person specified in Section 121020, signs a written statement documenting the~~

1 person's informed consent to the test. This requirement does not
2 apply to such a test performed at an alternative site pursuant to
3 Sections 120890 or 120895. Nothing in this section shall be
4 construed to allow a person to administer a test for HIV unless
5 that person is otherwise permitted under current law to administer
6 an HIV test.

7 (d)

8 (c) Nothing in this section shall preclude a medical examiner
9 or other physician from ordering or performing a test to detect
10 HIV on a cadaver when an autopsy is performed or body parts are
11 donated pursuant to the Uniform Anatomical Gift Act (Chapter
12 3.5 (commencing with Section 7150) of Part 1 of Division 7).

13 (e) (1) The requirements of subdivision (e) do not apply when
14 blood is tested as part of a scientific investigation conducted either
15 by a medical researcher operating under the approval of an
16 institutional review board or by the department, in accordance with
17 a protocol for unlinked testing.

18 (2) For purposes of this subdivision, "unlinked testing" means
19 blood samples that are obtained anonymously, or that have the
20 name or identifying information of the individual who provided
21 the sample removed in a manner that prevents the test results from
22 ever being linked to a particular individual who participated in the
23 research or study.

24 (f)

25 (d) Nothing in this section shall be construed to permit any
26 person to unlawfully disclose an individual's HIV status, or to
27 otherwise violate provisions of Section 54 of the Civil Code, the
28 Americans With Disabilities Act of 1990 (Public Law 101-336),
29 or the California Fair Employment and Housing Act (Part 2.8
30 (commencing with Section 12900) of Division 3 of Title 2 of the
31 Government Code), which prohibit discrimination against
32 individuals who are living with HIV, or who test positive for HIV,
33 or are presumed to be HIV-positive.